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CRIMES AND OFFENSES

Child Custody: Amend Interference with Custody Law

CODE SECTION:	O.C.G.A. § 16-5-45 (amended)
BILL NUMBER:	HB 141
ACT NUMBER:	597
SUMMARY:	The Act amends the Code definition of interference with custody to include the willful and intentional retention of a child past the period of legal visitation. The Act applies to children retained within the state.
EFFECTIVE DATE:	July 1, 1987

History

The Interference with Custody Statute, O.C.G.A. § 16-5-45, provides protection for custodians of children from having those children enticed away from their care or harbored if the child leaves of his own accord.¹ While adequate to protect against interference with custody by strangers, O.C.G.A. § 16-5-45 originally failed to address the increasing problem of custody interference by those who have visitation rights, but fail to return the child after the visitation period has expired. In 1986, the Georgia General Assembly amended the Interference with Custody Statute to include a person who "in the lawful exercise of a visitation right and, upon the expiration of the period of lawful visitation, intentionally retains possession of the minor or committed person in another state for the purpose of keeping the minor or committed person away from the individual having lawful custody"² This provision assisted the custodial parent whose child was moved across the state line. It left unresolved the plight of the parent whose child may be a further distance away, but still within the borders of Georgia. Magistrate judges were in disagreement as to whether the intrastate retention of a child after the expiration of a legal visitation period was to receive the same treatment as an interstate one.³

1. The crime of interference with custody can, in some cases, be a lesser included offense to the crime of kidnapping under O.C.G.A. § 16-5-40 (1984). *See, e.g., Watson v. State*, 235 Ga. 461, 219 S.E.2d 763 (1975).

2. O.C.G.A. § 16-5-45(c)(2) (Supp. 1987).

3. Telephone interview with Representative Peggy Childs, House District No. 53 (April 27, 1987). [hereinafter Childs Interview.] One impetus for the bill was the need to clarify the interpretation to be given O.C.G.A. § 16-5-45. Magistrate judges in

Some courts questioned whether they had proper jurisdiction over such cases.⁴

HB 141

HB 141 is a clarification of the previously amended O.C.G.A. § 16-5-45. The Act includes within the definition of "interference with custody" the retention of possession "within this state of a child or committed person upon the expiration of a lawful period of visitation . . ."⁵ While the original bill received no substantial opposition, it passed the House with a committee amendment and a floor amendment added to the original version. These amendments provided for an exception to the offense when a medical doctor determined a child should not be returned at the appointed time and added the word "willfully" to the original version's "intentionally."⁶ To be culpable, the person retaining possession must do so "intentionally and willfully." The Senate Committee on Children and Youth amended this version by striking the medical doctor exception. Concern was expressed that this exception placed the doctor in a position superior to the court order and that a parent retaining possession might be a physician or have a physician friend willing to make an unfounded determination of medical necessity.⁷ The final version of the bill passed with this exception deleted. The requirement that the retained possession be intentional and willful provides protection for the innocent person who is unable to return possession due to factors beyond his or her control, without the enumeration of specific exceptions.⁸

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Dekalb County encouraged Representative Childs to introduce HB 141.

4. Childs Interview, *supra* note 3.

5. O.C.G.A. § 16-5-45(1)(c) (Supp. 1987). The Act also changed the pronoun "he" to "the person" since the perpetrator of interference with custody can be female as well as male. O.C.G.A. § 16-5-45(1) (Supp. 1987).

6. HB 141, § 1 (CAFA), 1987 Ga. Gen. Assem.

7. Childs Interview, *supra* note 3.

8. *Id.*